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9
10 Attorney for Defendant
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12 IN THE UNITED STATES DISTRICT COURT

13 OF THE

14 NORTHERN MARIANA ISLANDS

15 UNITED STATES OF AMERICA,

16 Criminal Case No. 07-00019

17 Plaintiff,

18 v.

19 SAMUEL RAYBURN,

20 Defendant.

21 **MOTION IN LIMINE TO
22 EXCLUDE TAPE RECORDING
23 FROM MAY 25, 2006 AND
24 TRANSCRIPT OF THE
25 RECORDING**

26 COMES NOW, Defendant Samuel Rayburn, by and through
27 undersigned counsel, and hereby requests for an order excluding a recording
28 obtained on May 25, 2006 and the transcript of that recording. Defendant submits
that the recording is so poor in quality and is garbled, thus rendering the recording
as "untrustworthy, confusing, and of little or no probative value." In addition
Defendant also requests the exclusion of the transcript prepared for that recording
because the transcript is not an accurate rendition of the contents of the recording.

29 As an alternative to complete exclusion of the recording or the
30 transcript, Defendant requests for a limiting instruction regarding the use of the
31 transcript as a substitute for the tape recording and to deny the admission of the
32 transcript.

1 transcript into evidence. *See United States v. Turner*, 528 F.2d 143 (9th Cir. 1975).

2 Proposed limiting instructions have been enclosed for the Court's consideration.

3 *See United States v. Singleton*, 125 F.3d 1097, 1105 (7th Cir. 1998); Exhibits A

4 and B.

5 Respectfully submitted this 7th day of September, 2007.

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8 /s/

9 **DANILO T. AGUILAR, F0198**
10 Attorney for Defendant
11 Samuel Rayburn

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EXHIBIT "A"

Ladies and gentlemen, the tape recording (you will hear)(that you have heard of the conversation identified by this witness, I have (have not) received it into evidence and it will be played for you in a few moments. Transcripts of that recording are going to be furnished to you for your guidance in listening to the recording and you will be able to clarify portions of the recording which may be difficult to hear and to identify the speakers you hear on the recording.

The recording, however, what you hear, is the evidence in the case and the transcripts are not evidence. If you perceive any variation between what you hear on the recording and the transcript, then you will be guided solely by what you hear and not by the transcripts.

If you cannot determine from the recording that particular words were spoken, you must disregard the transcripts insofar as those words are concerned. In other words, what you hear is the evidence and not what you see on the transcript. Those are just an aid or a guide.

I will instruct you now after the transcript is passed out to you that you are not to read the transcript or look at the transcript until after the recording starts. Then you can follow along while the recording plays, on the transcript.

EXHIBIT "B"

I will remind the jury that what you hear on the recording, which the recording (has now)(has not) been admitted into evidence, is the evidence, and not what you may see on the transcript. So that if there is anything that is not audible on the recording or that is at variance with the transcript, you will be governed by what you hear, not what you read. We will follow the same procedure as we did previously. That is that you may look at the transcript once the recording starts to play, and don't turn a page until I indicate that you may. In other words, don't try to read to the end of the story before we get through it.